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C O N F I D E N T I A L SECTION 01 OF 02 BERLIN 002239

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TAGS: [PARM](#) [KNNP](#) [KJUS](#) [KCRM](#) [PREL](#) [MNUC](#) [ETTC](#) [GM](#)
SUBJECT: GERMAN COURT TO RESUME TRIAL AGAINST A.Q.
KHAN-LINKED DEFENDANT GOTTHARD LERCH

REF: A. PRETORIA 3543
[1](#)B. PRETORIA 3210
[1](#)C. 2006 BERLIN 2194
[1](#)D. 2006 BERLIN 1170

Classified By: Global Affairs Counselor Donald R. Shemanski
for reasons 1.4 (b) and (d).

[1](#)1. (C/NF) SUMMARY: A federal court in Stuttgart announced November 14 that trial proceedings would resume in early 2008 against Gotthard Lerch, a German citizen allegedly linked to the A.Q. Khan nuclear proliferation network. The trial was suspended in July 2006 pending resolution of jurisdictional issues and difficulties in obtaining testimony and evidence from Switzerland and other countries. MFA officials told us December 20 that Germany welcomes the September conviction in South Africa of Khan associate Gerhard Wisser, but expressed concern about lack of access to Wisser's testimony and evidence in possession of the South African authorities. An MFA contact cited "friction" between German and South African legal authorities as a primary factor. He claimed South African authorities have refused to consider German legal assistance requests until South African prosecutors complete their ongoing investigation, which German officials estimate could take as long as three to four years. END SUMMARY.

[1](#)2. (SBU) On November 14, the Stuttgart Higher Regional Court (Oberlandesgericht) announced that trial proceedings would resume against Gotthard Lerch, a German citizen allegedly linked to the A.Q. Khan nuclear proliferation network. In 2006, the Federal Prosecutor's office in Karlsruhe formally petitioned to have the case reassigned from the Mannheim District Court (Landgericht) to the Stuttgart court as the result of changes in German procedural rules that give regional (federal) courts jurisdiction over violations of the Foreign Trade and Payments Act (FTPA) and the War Weapons Control Act (WWCA). The case will be handled by a special chamber (Staatsschutzkammer) of the Stuttgart court that is charged with trying crimes against the state. The prosecutor in the case, yet to be assigned, will now be a federal prosecutor, rather than the state prosecutor who was in charge of the Mannheim trial. Stuttgart court officials expect the trial to resume early next year. The maximum sentence for a single violation of the WWCA is five years in prison, with additional years (up to 15) being added for additional violations. The court also has the authority to confiscate all of Lerch's assets, if he were found guilty.

[1](#)3. (SBU) The Mannheim District Court suspended the trial of Gotthard Lerch in July 2006 citing the jurisdiction issue and unresolved German requests for judicial assistance from

Switzerland, Liechtenstein, Malaysia, and South Africa (ref C). (NOTE: Contrary to media reports stating that the Mannheim court declared a mistrial, court officials insisted at the time that the trial against Lerch had only been suspended. Post's in-house legal research concluded that German law does not provide for a mistrial -- either a case is suspended or dismissed outright. END NOTE)

¶4. (SBU) The Mannheim court also ruled that it was unreasonable to detain Lerch during the trial's suspension and temporarily released him on bail. Lerch, who was extradited from Switzerland in 2005 on the condition that he only be charged with violating the WWCA, was subsequently given permission to return to Switzerland. According to media reports, Germany and Switzerland have since resolved procedural issues on the sharing of evidence and the cooperation of subpoenaed witnesses. Similar German petitions to South Africa and Malaysia have not yet been approved. Post has received conflicting information as to whether Lerch remains in Switzerland or has returned to Germany.

¶5. (C/NF) On December 20, MFA International Penal, Customs, and Tax Law Division Director Thomas Neisinger and Penal Law Desk Officer Heidi Friedrich briefed emboffs on German efforts to prosecute Lerch and on the possible impact of the September conviction in a South Africa court of A.Q. Khan network proliferator Gerhard Wisser (refs A and B). Neisinger stated that German officials in South Africa had tried to make contact with Wisser, who is a German citizen, but had not received any information from him that might be of use in the Lerch trial. Neisinger noted that South African authorities had objected to the German Government

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attempts to contact Wisser, claiming that any cooperation on his part with German authorities might jeopardize the South African Government's ongoing investigation. Neisinger insisted that German Government officials have the right under international law to contact German nationals living abroad such as Wisser, particularly in light of the fact that Wisser's movements in South Africa have not been restricted, notwithstanding his recent conviction.

¶6. (C/NF) Neisinger said the MFA was aware of "friction" between the German Embassy and South African legal authorities, but quickly noted the issue had not yet been broached in any "high-level" bilateral discussions. Nonetheless, Neisinger said, German prosecutors are "eager" to obtain any evidence - including Wisser's testimony - that could be used in the Lerch case. To that end, Neisinger said, Germany had submitted ten legal assistance requests to the South African Government since 2005. Of those, eight had gone unanswered. In the other two cases, South African authorities "informally" responded that they will not be in a position to cooperate until they "wind up" their investigation. Neisinger speculated that it could take as long as three to four years to wrap up the case, particularly as new evidence comes to light as the result of Wisser's cooperation with South African investigators.

¶7. (C/NF) Neisinger said South African authorities had "not shown interest" in a German proposal that would permit Wisser to testify in the Lerch trial via video link. Such an arrangement, Neisinger explained, would allow Wisser to offer testimony in a "completely non-coercive environment." (NOTE: South Africa and Germany do not have a bilateral extradition treaty. END NOTE.) In response to German inquiries about the possibility of an informal information exchange, Neisinger said, South African officials had refused because they did not want to jeopardize (unspecified) ongoing legal proceedings in South Africa. When pressed, Neisinger acknowledged that even under German rules of evidence, which are more flexible than in the United States, information obtained via informal cooperation could probably not be used in court, notwithstanding the considerable discretion

afforded to German judges concerning the admission of evidence.

¶8. (C/NF) Neisinger said German diplomats in Vienna had shared their concerns with South Africa's IAEA PermRep, Ambassador Minty, in September 2007, but had not received a response. Neisinger expressed concern that efforts to prosecute Lerch would be significantly more complicated without Wisser's testimony and access to evidence in the possession of South African authorities.

¶9. (U) This message has been coordinated with ConGen Frankfurt.
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